

## REMARKS/ARGUMENTS

Claims 17, 19, 20, 22-30, 32 and 33 are pending in this application. Claims 1-16, 18, 21 and 31 were previously cancelled. Claim 32 was amended to make a grammatical correction.

### **Amendment to the Title and Specification**

#### **Claim of Priority**

The title and specification were amended in the Preliminary Amendment dated October 11, 2005 and also in the Amendment dated July 21, 2010. The Preliminary Amendment is listed and can be found in the file history on the PAIR system. However, the amendment to the title has not been entered into the bibliographic information for this case. In addition, the amendments to the title and specification were not included in the corresponding published application, No. 2006/0263482 A1. The same amendments to the title and specification are repeated in this amendment for convenience. Applicants respectfully request that the amendments originally made in October 11, 2005 be entered into this case. **Applicants request that the examiner please enter and acknowledge these amendments. This is the third time these amendments have been presented. In addition, the appropriate boxes in #12 on the Office Action Summary regarding the claim of priority are not checked.** The foreign priority is acknowledged in PAIR.

If the Examiner is waiting until there are allowable claims before she addresses these matters, she is respectfully requested to indicate that she is waiting.

#### **Claim Rejections -- 35 USC §103**

Claims 17, 19-20, 22-28, 30, 32 and 33 are rejected under 35 U.S.C. S103 (a) as being unpatentable over Todorova.

The Examiner has provided a detailed discussion of the reasoning on pages 2-6

of the Office Action. The Fertman reference is relied upon as evidence of the extract preparation, as discussed further below. In regard to claims 32 and 33, Torodova discloses obtaining malt sprout extract and further using it in the production of beer (ABSTRACT). Todorova discloses that malt sprouts were obtained as a "waste product of malt production" (page 2 of the translation). Torodova further discloses that malt sprouts extract was obtained "by the method described in the literature (4)" (i. e. Fertman).

As described in the Fertman reference, the extract was prepared by:

- obtaining crushed malt sprouts (the by-product of malt industry), (page 2, §2, page 3 bottom paragraph of the translation);
- adding water to malt sprouts for a period of time to produce immersion liquid (page 3, bottom paragraph of the translation);
- filtering the immersion liquid to remove the malt sprouts (page 4, top paragraph of the translation).

Fertman also discloses that malt sprouts is a source of nitrogen and vitamins (page 2, §1 of the translation). Fertman further discloses creating optimal conditions for the transfer of these valuable components into the liquid (page 3, §1 of the translation).

Therefore, the Examiner maintains that steps (a) and (b) are disclosed in Fertman, which is incorporated in Todorova as a reference to the method of preparation of malt sprouts extract. In regard to the step (c) in claim 32, Todorova discloses using malt sprouts extract obtained from the immersion liquid in the production of beer, where malt sprouts extract is used in the production of beer wort to improve its composition (page 1 and 5 of the translation).

In regard to the controlling particle size of malt sprouts to certain degree recited in claims 32, 33, 17 and 20, the specific surface area of malt sprouts associated with particle size recited in claims 22 and 23, the bulk density of malt sprouts associated with particle size recited in claim 23, the Examiner notes both Todorova and Fertman are silent as to these recitations. Both Todorova and Fertman are silent as to the unpleasant flavor of malt

sprouts. Fertman discloses the malt sprouts were crushed and were obtained as a by-product of malt industry.

The present claims are clearly different from the invention of Todorova by using of immersing liquid of specific particle size-controlled malt sprout, which is obtained by immersing said malt sprout in a liquid to allow the components of the malt sprout to seep out into the liquid. Further, in Fertman, there is also no description or suggestion of using of immersing liquid of specific particle size-controlled malt sprout.

As mentioned above, the present claims relate to the process for producing food and beverage product by using an immersing liquid of specific particle size-controlled malt sprouts, which is obtained by immersing said malt sprout in a liquid to allow the components of the malt sprout to seep out into the liquid. On the contrary, both of Todorova and Fertman do not disclose or suggest the producing beverage products by using the immersing liquid of specific particle size-controlled malt sprouts of the invention of the present application. Therefore, to combine these documents, the person skilled in the art does not have the motivation to use the process disclosed and claimed in the present application and this process is patentable over the two cited references. There would be no reason to suddenly jump to particle size-controlled sprouts from the Fertman and Todorova references, much less jump to the specific ranges disclosed and claimed. Neither reference would lead someone skilled in the art to vary the size of the particles of malt sprout before immersion or have any suggestion that varying the size of the malt sprouts might affect the resulting product in any way, much less vastly improve the taste of the product. These references would not suggest experimenting with size at all and certainly do not teach or lead one to the particular size category which succeeds in obtaining a food or beverage product without the unpleasant taste normally present when using malt sprouts or malt sprout extracts.

In fact, Fertman teaches away from the disclosure of applicants. Fertman refers to pulverized sprouts, which is the exact opposite of the larger sized particles taught and

claimed in the present application. Page 3 of the Fertman translation states:

“Ten times the amount of water was poured over the **pulverized** sprouts which were kept at temperatures ...”. (Emphasis added.)

As noted in the attached entry from the Merriam-Webster dictionary, <http://mw4.m-w.com/dictionary/pulverized>, pulverize means to reduce to very small particles, atomize, and is derived from the Latin words *pulver-*, *pulvis* meaning dust or powder. Immersions prepared by Fertman's method would have the unpleasant flavor, the same unpleasant taste avoided by the process taught and claimed in the present invention (see in particular, examples 1 and 2 on pages 4-5 of the published application US 2006/0263482 A1). Prior to applicants research, there was no way to even know if it was at all possible to produce a preparation of malt sprouts or an immersion liquid from this preparation without also carrying over the unpleasant associated with malt sprouts. Applicants experiments could have failed to find a particle size which successfully eliminated the unpleasant taste. Neither reference would suggest or in any way lead someone skilled in the art to conduct experiments in size and seeping to attack the problem of unpleasant taste. Neither reference even recognizes unpleasant taste as a problem.

The Examiner further pointed out that claim 29 is rejected under 35 U.S.C. §103(a) as being unpatentable over Todorova in view of Takaichi (US 6,251,457) Torodova is taken as cited above. Torodova discloses that obtained malt sprouts extract has a high content of amino nitrogen (page 5 of the translation). Torodova also discloses that malt sprouts extract contains various amino acids and metallic cations (minerals such as zinc, manganese, copper and magnesium (page 4-7 of the translation). Torodova is silent as to the use of malt sprouts extract in the production of the soft beverages. Takaichi discloses preparation of powdered soft drink by addition of amino acid and minerals (Co. 3 lines 17-41).

The examiner thus maintains that one of ordinary skill in the art would have been

motivated to modify Torodova in view of Takaichi and to use malt sprouts extract in the preparation of the soft beverage as taught by Takaichi. One of ordinary skill in the art would have been motivated to do so in order to increase nutritional value of the beverage by addition of vitamins and amino acids as taught by Takaichi.

However, Takaichi does not disclose or suggest the malt sprouts, and further Takaichi is silent as to the unpleasant flavor of malt sprouts and any means of avoiding the unpleasant taste. In addition, Torodova is silent as to the use of malt sprouts extract in the production of the soft beverages. Of course, both references are completely silent with regard to varying the size of the malt sprout particles prior to their immersion. No one would have any idea from either reference that varying the size of the malt sprout particles could possibly have any effect on the taste of the resulting soft drink.

Applicants respectfully request that a timely Notice of Allowance be issued in this case.

### **CONCLUSION**

If the Examiner has any questions or suggested Examiner's amendments, the Examiner is respectfully requested to call the undersigned.

The Commissioner is hereby authorized to charge any additional fees, or to credit any overpayment, to Deposit Account No. 50-3195.

Respectfully submitted,

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Appendix:

1. Merriam-Webster entry -- pulverize